

From: Torma, Tim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9BA71394653C408CA8E45F71EA617843-TORMA, TIM]
Sent: 2/1/2017 9:32:45 PM
To: Kenny, Shannon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57cd4660f9e342a99180ac2cbc3d264c-Kenny, Shannon]; Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
Subject: BNA: Trump Memo Spurs New Industry Push for EPA Permitting Changes

Trump Memo Spurs New Industry Push for EPA Permitting Changes

Posted February 01, 2017, 8:00 A.M. ET

By Patrick Ambrosio

Manufacturers hope President Donald Trump's call to expedite permitting for new projects will galvanize the EPA and state environmental regulators to speed up their permit review processes and pursue broader revisions to underlying regulations.

Trump's Jan. 24 presidential memorandum doesn't contain specific policy changes, but rather instructs the Commerce Department to coordinate with the EPA and other agencies to develop a "Permit Streamlining Action Plan" that recommends policy and procedural changes that will boost domestic manufacturing. Despite the lack of details, a pair of industry trade organizations that have long sought changes to the EPA's regulation of the manufacturing sector are optimistic that the new administration can help ease the process of obtaining air and water permits.

The Trump memo could cover a number of environmental permits that manufacturing facilities must obtain, according to Michael Walls, vice president of regulatory and technical affairs at the American Chemistry Council. Those include Title V operating permits and New Source Review permits issued under the Clean Air Act, as well as National Pollutant Discharge Elimination System permits issued under the Clean Water Act.

The manufacturing sector has highlighted regulatory requirements, including delays in the processing of necessary permits, as a barrier to investment in domestic manufacturing projects. Greg Bertelsen, senior director for energy and resources at the National Association of Manufacturers, told Bloomberg BNA that the Trump memo is "right in line" with that organization's message on environmental regulations for the past several years.

Trump Priority

Jon Sohn, an environmental and natural resources attorney at Dentons in Washington, D.C., said there are a range of issues that can make the permitting process take longer than industry would like. The Trump administration, however, will have to make the process more efficient and credible in a way that doesn't circumvent the public's right to engage on projects in their community, Sohn told Bloomberg BNA.

"Figuring out how to get that done is clearly a priority of President Trump," Sohn said. "They're going to have to find a way to do that that respects and values the environment."

The memo, which calls on federal agencies to submit to the White House within 120 days a plan with recommendations to streamline permitting and ease regulation on the manufacturing sector, is consistent with Trump campaign promises to reduce regulations as part of an economic agenda to drive job growth. The president followed up the memo on streamlining permitting and reducing regulatory burdens on manufacturing with a Jan. 30 executive order requiring agencies to identify two existing regulations for elimination for every new regulation issued.

In addition to the order instructing the removal of regulatory burdens on manufacturing, a Trump executive order to speed up environmental reviews for pipelines, highways and other infrastructure projects could benefit manufacturers, Walls said.

"I think it's appropriate to look at those two memos together," Walls said. "New investment in our industry is dependent on new infrastructure."

But Sohn added that any list of credible recommendations on permitting will have to include a "frank discussion" on the capacity of the agencies to do the work faster in light of diminishing budgets in recent years, both on the state and federal levels.

"In my view, the wrong direction would be to set up very draconian timelines without corresponding budget and capacity support to the EPA and their state partners," Sohn said.

Permitting Run by States

The Trump administration won't be able to simply order the EPA to issue permits faster because most environmental permitting programs are run by state regulators, with the federal government playing an oversight role. While there are some actions the federal government could take in the short term to expedite permitting, such as revising the process for reviewing state permit decisions, changing the underlying environmental regulations governing the manufacturing sector would take time.

"I think [Trump] appears to have good intentions, but EPA doesn't directly issue most of the permits," said Brian Potts, a partner at Perkins Coie LLP in Madison. "I always tell clients that the wheel of justice moves slowly. ... The wheels of administrative agencies move even more slowly."

Potts, whose practice focuses on environment and energy issues, said the process to amend any EPA rules to ease permitting requirements, which states then would have to incorporate into their own rules, could take years. In addition, potential administrative changes to other regulations affecting the manufacturing sector, such as Clean Air Act regulations on the utility sector, won't be made quickly because they would be subject to rulemaking requirements under the Administrative Procedure Act, Potts said.

Opposition Likely

Potential changes to the underlying regulations, as well as any push to change the Clean Air Act and other environmental laws, will likely face fierce opposition from environmental watchdog groups, which have said they'll oppose any effort by Trump or Oklahoma Attorney General Scott Pruitt, the nominee to head the EPA, to weaken environmental protections.

Eric Schaeffer, director of the Environmental Integrity Project, told Bloomberg BNA that state regulators already process most environmental permits quickly. Schaeffer served as director of the EPA's Office of Civil Enforcement before leaving the agency in 2002 to co-found the Environmental Integrity Project.

"Most permits go through pretty quickly if the states want them to go through quickly," Schaeffer said. "Where they get held up sometimes is if there is a lot of local opposition" to a project.

The Trump memo indicates that to the extent the EPA reviews a permit, the goal of the agency should be to expedite its processing, he added.

"They're sending a message to grease the permits through," Schaeffer said. "Our take on that is: You want a fast permit? Do what the law says you're supposed to do."

Schaeffer said environmental advocates will continue to exercise their right to challenge permit decisions in the courts, but acknowledged that it is "impossible to keep up" with all the permits that are issued.

Quicker Decisions a 'Simple Reform'

While states take the lead on most environmental permitting issues, there are several steps the federal government can take to speed up the process, attorneys said. In the short term, federal agencies could prioritize permitting programs and reallocate resources to those activities.

Besides air and water permits processed on the state level, there are some permits that the federal government processes. The EPA is the lead permitting agency in some areas, mostly on tribal lands, while the U.S. Army Corps of Engineers reviews wetlands permits issued under Section 404 of the Clean Water Act.

The EPA often defers making controversial decisions on permits and instead puts things on hold, according to Jeffrey Holmstead, who served as assistant EPA administrator for air and radiation under President George W. Bush. Holmstead, now a partner at Bracewell LLP in Washington, D.C., who focuses on energy and environmental issues, told Bloomberg BNA that sometimes his main job in helping a client through the permitting process is to “hound the agency” to get a decision made.

Making more timely decisions is a “simple reform” that could be implemented fairly quickly because it doesn’t require any regulatory changes, Holmstead said.

Modeling Requirements Could Be Eased

One area that Holmstead identified for improvement is the EPA’s oversight of air quality modeling requirements under the New Source Review permitting program. That program requires manufacturing facilities, power plants and other stationary sources of air pollution to obtain a permit before construction begins.

To obtain a New Source Review permit, an applicant must demonstrate that emissions from the project won’t contribute to a violation of federal air pollution standards for ozone and other pollutants. Holmstead said the modeling is “very case-specific” and can be slowed by the EPA’s need to approve the modeling evaluations.

“In many cases, this is what holds up the project more than anything else,” he said.

In a January Environmental Law Institute [article](#) he co-authored, Holmstead argued that the EPA’s current modeling guidance “substantially overstates” the air quality effects of potential new pollution sources and recommended adopting a probabilistic modeling approach that reflects variability in emissions, weather and background.

Several attorneys noted that the EPA under President George W. Bush sought to change the New Source Review program to ease requirements on power plants, refineries and other industrial facilities by exempting routine maintenance projects from the permitting review. But the U.S. Court of Appeals for the District of Columbia struck that rule down in 2006 (*New York v. EPA*, 443 F.3d 880, 61 ERC 2133 (D.C. Cir., 2006)).

Changes to Objection, Review Processes

Another area the Trump administration could target in an effort to expedite environmental permitting is the objection process under the Title V operating permit program. Title V of the Clean Air Act allows the public to petition the EPA administrator seeking an objection to Clean Air Act operating permits issued by state permitting authorities.

Environmental advocates, including the Environmental Integrity Project, filed 34 permit objection petitions in 2016, according to the EPA’s Title V petition [database](#). The agency is supposed to issue a decision on Title V permit objection petitions within 60 days, but frequently takes longer.

“That might be something you could see the Trump administration try to speed up,” Sohn of Dentons said.

Attorneys also identified the Environmental Appeals Board’s processes for reviewing certain types of permitting decisions as a candidate for changes under the Trump administration. Permit applicants and other interested parties can petition the board, a panel of independent judges, to appeal permit decisions from EPA regional officials and some state permitting authorities. There is “no reason” the Environmental Appeals Board has to be involved in the permitting process and suggested that EPA leadership could easily alter the process, Holmstead said.

Guidance, Rulemaking Options

In addition to internal EPA process changes, the Trump administration could issue new guidance and regulations to allow for the faster processing of environmental permits at the state level.

For example, the EPA could clarify requirements under the National Pollutant Discharge Elimination System water pollution permitting program, according to Fredric Andes, a partner at Barnes and Thornburg LLP with offices in Washington, D.C., and Chicago. One area that produces some uncertainty and confusion in the Clean Water Act permitting process is antidegradation, the protection of water bodies that meet water quality standards to avoid backsliding, Andes told Bloomberg BNA.

Additional guidance, as well as possible regulatory changes, might be needed to address water permitting for new manufacturing plants built near bodies of water deemed impaired, Andes said. That's due to a 2007 court decision that rejected a water pollution permit for an Arizona copper mining project because the permit would have allowed copper discharges into a river that didn't meet water quality standards (*Friends of Pinto Creek v. EPA*, 504 F.3d 1007, 65 ERC 1289, 2007 BL 118648 (9th Cir. 2007)).

Andes said the EPA hasn't clarified how that ruling affects the ability of new plants to obtain a permit for discharges into an impaired body of water, even if the discharge from that facility is small. The issue hasn't been a priority for the agency because there haven't been many new plants built in the U.S. since the 2007 decision.

"EPA may need to think about not only guidance, but changing the rules that were interpreted in that case," Andes said. "It just hasn't been a priority issue because ... there simply hasn't been a pressing need."

Industry Prepping Recommendations

The agencies tasked with developing the permitting plan can expect to hear a variety of suggestions from industry during the outreach period. Walls of the American Chemistry Council said the agencies' outreach effort will allow for industry to identify specific barriers and concerns to expansion projects.

When asked for the types of regulatory changes that the Trump administration could take to boost manufacturing, Walls identified implementation of more stringent federal ozone standards set in 2015 as an area of focus. The ACC and other industry groups have opposed the standards, which parts of at least 22 states are unlikely to meet. A failure to attain the ozone standards would mean additional pollution control and permitting requirements in areas ranging from big metropolitan areas like Los Angeles to the rural, but oil-and gas-rich Uinta Basin in Utah.

As part of this permitting and regulatory burden memo, the EPA could ease the implementation schedule for the ozone standards, which calls for decisions on what areas do and don't meet the standards by Oct. 1, Walls said.

Bertelsen of the National Association of Manufacturers also identified the ozone standards as an area where the Trump administration could focus. Besides issuing more timely guidance to states on how to implement permitting under the ozone standards, the EPA also could revoke the less-stringent 2008 ozone standards to ease requirements on states and manufacturers.

Industry advocates are eyeing Congress as a potential avenue to ease compliance with the 2015 ozone standards. Congressional Republicans have shown an appetite for rolling back Obama-era environmental rules early in the 115th Congress: The House is scheduled to vote this week on a pair of resolutions to disapprove of Obama-era rules on methane emissions and coal mining waste. The Congressional Review Act allows Congress to consider resolutions of disapproval on recently issued regulations under expedited floor procedures in the Senate.

While environmental advocates have pledged to fight back against efforts to weaken the Clean Air Act, Holmstead of Bracewell said he's optimistic that there may be an opportunity for Congress to act on environmental issues. Holmstead noted that there are a number of Senate Democrats up for re-election in 2018 in states that Trump won in the 2016 election.

"I think there's an opportunity for sensible statutory reform with these sorts of things," Holmstead said.

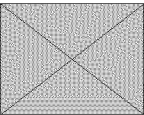
To: Kenny, Shannon[Kenny.Shannon@epa.gov]; Torma, Tim[Torma.Tim@epa.gov]
From: Shaw, Nena
Sent: Tue 2/21/2017 5:28:22 PM
Subject: Fwd: FYI exec orders etc.
[EO 13771 reducing regulation 1-30-17a.pdf](#)
[ATT00001.htm](#)
[EO 13766 expediting environmental reviews 1-30-17.pdf](#)
[ATT00002.htm](#)
[EO expediting environmental reviews FR 2017-02029.pdf](#)
[ATT00003.htm](#)
[pres memo streamlining permitting FR 2017-02044.pdf](#)
[ATT00004.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Sachs, Robert" <Sachs.Robert@epa.gov>
To: "OP-OSEM-Everyone" <OPOSEMEveryone@epa.gov>
Subject: FYI exec orders etc.

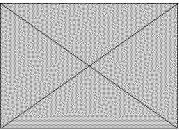
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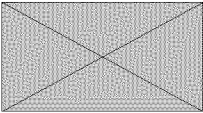
Bob Sachs
Integrated Environmental Strategies Division
Office 202 566 2884 | Mobile **Personal Phone / Ex. 6**

EPA Employees: click the link to find a broad array of information on the
"Sustainability Community of Practice" SharePoint site

EPA Sharepoint Link / Ex. 6



<https://www.epa.gov/sustainability/giwiz>



<https://www.epa.gov/sustainability/mwiz>

To: Kenny, Shannon[Kenny.Shannon@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
Cc: Shaw, Betsy[Shaw.Betsy@epa.gov]
From: Dunham, Sarah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A9444681441E4521AD92AE7D42919223-SDUNHAM]
Sent: Wed 2/1/2017 3:43:49 PM (UTC)
Subject: FW: Presidential Memorandum on Permitting
[Permitting PM.pdf](#)

Hi Shannon-

I know there are a lot of things up in the air and in process, but I hadn't heard anything in any of the Agency first assistant meetings about this permitting Memorandum and whether EPA was taking a look at it (it is very possible I missed a discussion). Do you know whether anyone in your shop is looking at it or have suggestions for how we should engage at this point?

Thanks

Sarah

-----Original Message-----

From: Shaw, Betsy
Sent: Wednesday, February 01, 2017 10:34 AM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>
Subject: Presidential Memorandum on Permitting

Hi Sarah,

Attached is the permitting PM and below is the article I mentioned.

Thanks,

Betsy

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Posted: Feb 1, 2017, 8:00 AM EST

By Patrick Ambrosio

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http://esweb.bna.com/eslw/lpages/lpages.adp?pg=breaking_news&bn_product=deln#urn:bna:00000159e0b2d860a7fff6f260440000

To: Kenny, Shannon[Kenny.Shannon@epa.gov]; Torma, Tim[Torma.Tim@epa.gov]
Cc: Tyler, Tom[Tyler.Tom@epa.gov]
From: Shaw, Nena[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2AE00B27EC1544EF8331567CE532BDD3-SHAW, NENA]
Sent: Thur 2/16/2017 9:23:16 PM (UTC)
Subject: RE: ICYMI: Observers Question Effectiveness Of Trump Permit Streamlining Orders

Yes, that was my take too...

Nena Shaw
Acting Office Director, Office of Strategic Environmental Management
Office of Policy
(C) Personal Phone / Ex. 6

EPA Employees: click the link to find a broad array of information on the “Sustainability Community of Practice” SharePoint site
https://usepa.sharepoint.com/sites/OA_Community/Sustainability/SitePages/Home2.aspx

From: Kenny, Shannon
Sent: Thursday, February 16, 2017 2:41 PM
To: Torma, Tim <Torma.Tim@epa.gov>
Cc: Shaw, Nena <Shaw.Nena@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>
Subject: Re: ICYMI: Observers Question Effectiveness Of Trump Permit Streamlining Orders

Think **Deliberative Process / Ex. 5**

Sent from my iPhone
On Feb 16, 2017, at 2:35 PM, Torma, Tim <Torma.Tim@epa.gov> wrote:

Daily News

Observers Question Effectiveness Of Trump Permit Streamlining Orders

February 15, 2017

Observers are questioning the effectiveness of recent Trump administration executive orders aimed at speeding permitting of infrastructure and pipeline projects, including one aimed at “high-priority” infrastructure that appears to break little new ground beyond bipartisan permit reforms already in law.

Some critiques suggest that the high-priority order might be most relevant as a symbolic move designed to convey the administration's support for streamlining regulation.

Others suggest that the orders and related documents show signs of being drafted by inexperienced staff, resulting in redundant or even counterproductive requirements.

“It looked to me like whoever wrote the [high-priority infrastructure] order did not know about the the FAST Act,” says one attorney well versed in the federal permitting process, referring the 2015 transportation law that includes bipartisan language requiring federal permitting improvements. “[That law] does just about everything in the [Trump] order, and more,” the source says.

A former government official says that similar reforms are also included in a permitting “dashboard” created after a 2011 Obama-era executive order calling on agencies to expedite federal projects.

The attorney familiar with federal permitting says: “It's amateur hour over there.”

Similarly, one GOP source is sharply criticizing the details of a related memorandum on

the controversial Keystone XL tar sands pipeline that the source claims does not advance the project as intended.

The source says Trump could have simply reversed Obama's decision that a cross-border permit for the project was not in the national interest. Instead, the memo invites TransCanada to resubmit its application for the permit and directs the State Department to conduct an expedited 60-day review of the application.

However, the source says the memo cannot guarantee an expedited review or set any specific deadline because opponents will be able to raise hurdles and delay during the new review, including possible litigation.

Trump's Orders

Those two orders came alongside three others issued Jan. 24 -- including an order advancing consideration of the Dakota Access pipeline (DAPL), another requiring pipelines to use materials produced in the United States and one that launched a process to solicit potential permitting reforms for manufacturing projects.

Since then, the Army Corps of Engineers approve a key easement for the Dakota Access project Feb. 8, as ordered under the memo, and news reports show construction crews arriving back at the site on Feb. 9. But a tribe contesting the pipeline quickly filed a legal challenge to block the work and protect its water supply.

The infrastructure orders were among the first to be issued by the Trump administration and sources say they were written without gathering input from other agencies, lawmakers or subject-matter experts.

For example, the GOP source says that the main drafter of the Keystone memo, domestic policy adviser Stephen Miller, did not review the language with anyone and did not understand that it would not achieve what it intended.

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federal agencies, as well as the White House Office of Management & Budget and CEQ. Many parts of that law built upon the 2011 Obama policy, EO 13604, with similar elements, including establishment of a permitting dashboard to track projects' progress. The statutory reforms cover a "broad swath of projects, and not only those involving surface transportation," according to a spring 2016 article in the *Real Estate Finance Journal*. The law applies to electricity-related infrastructure, surface transport, aviation, ports, water resource projects, broadband, pipelines, manufacturing, as well as projects with at least a \$200 million total investment, the article says.

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Also, this source says while the DAPL memo ordered the Corps to grant an easement to allow the pipeline to traverse a Missouri River tributary and end an environmental review that the Obama administration began just before leaving office, it does not address an overarching hurdle: a land dispute between the Standing Rock Sioux and the federal government that dates back to an 1851 treaty.

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DAPL spokespeople did not respond to requests for comment about the nature of the land dispute, but a November [*Washington Post* report](#) suggests that the dispute grew when the government built the Oahe dam in 1944 that created a lake and flooded fertile tribal land.

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water boundaries, resulting in the government acquiring some land that was owned by the tribe under an 1800s-era law. Part of that contested land is the subject of the recent easement.

As such, the tribe contends the Corps cannot grant the easement because it does not rightfully own the land. "It's important not to lose sight of the greater sovereignty issue," Jennifer Baker, a lawyer who has represented the tribe. "That's that the [DAPL] fight and all the fights against these ticking environmental bombs really boil down to. To overlook that would be to not do justice to such an important cause."

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"While the effectiveness and impact of these actions will depend on how they are implemented, they are a historic break from past administrations. The actions create significant opportunities for companies and investors . . . to engage with more compliant agencies. At the same time, the actions raise significant uncertainties as to application and will likely provide further basis for legal challenge to individual projects. Finally, though these actions arise from assertions of executive authority, many dovetail with efforts under way in Congress," says Rubin, now with Dorsey & Whitney.

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Dawn Reeves (dreeves@iwpnews.com) & *Doug Obey* (dobey@iwpnews.com)

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199164

To: Torma, Tim[Torma.Tim@epa.gov]
Cc: Shaw, Nena[Shaw.Nena@epa.gov]; Tyler, Tom[Tyler.Tom@epa.gov]
From: Kenny, Shannon[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=57CD4660F9E342A99180AC2CBC3D264C-KENNY, SHANNON]
Sent: Thur 2/16/2017 7:41:14 PM (UTC)
Subject: Re: ICYMI: Observers Question Effectiveness Of Trump Permit Streamlining Orders

Think **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 16, 2017, at 2:35 PM, Torma, Tim <Torma.Tim@epa.gov> wrote:

Daily News

Observers Question Effectiveness Of Trump Permit Streamlining Orders

February 15, 2017

Observers are questioning the effectiveness of recent Trump administration executive orders aimed at speeding permitting of infrastructure and pipeline projects, including one aimed at “high-priority” infrastructure that appears to break little new ground beyond bipartisan permit reforms already in law.

Some critiques suggest that the high-priority order might be most relevant as a symbolic move designed to convey the administration's support for streamlining regulation.

Others suggest that the orders and related documents show signs of being drafted by inexperienced staff, resulting in redundant or even counterproductive requirements.

“It looked to me like whoever wrote the [high-priority infrastructure] order did not know about the the FAST Act,” says one attorney well versed in the federal permitting process, referring the 2015 transportation law that includes bipartisan language requiring federal permitting improvements. “[That law] does just about everything in the [Trump] order, and more,” the source says.

A former government official says that similar reforms are also included in a permitting “dashboard” created after a 2011 Obama-era executive order calling on agencies to expedite federal projects.

The attorney familiar with federal permitting says: “It's amateur hour over there.”

Similarly, one GOP source is sharply criticizing the details of a related memorandum on the controversial Keystone XL tar sands pipeline that the source claims does not advance the project as intended.

The source says Trump could have simply reversed Obama's decision that a cross-border permit for the project was not in the national interest. Instead, the memo invites TransCanada to resubmit its application for the permit and directs the State Department to conduct an expedited 60-day review of the application.

However, the source says the memo cannot guarantee an expedited review or set any specific deadline because opponents will be able to raise hurdles and delay during the new review, including possible litigation.

Trump's Orders

Those two orders came alongside three others issued Jan. 24 -- including an order advancing consideration of the Dakota Access pipeline (DAPL), another requiring

pipelines to use materials produced in the United States and one that launched a process to solicit potential permitting reforms for manufacturing projects.

Since then, the Army Corps of Engineers approve a key easement for the Dakota Access project Feb. 8, as ordered under the memo, and news reports show construction crews arriving back at the site on Feb. 9. But a tribe contesting the pipeline quickly filed a legal challenge to block the work and protect its water supply.

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Message

From: Kenny, Shannon [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=57CD4660F9E342A99180AC2CBC3D264C-KENNY, SHANNON]
Sent: 2/1/2017 9:21:00 PM
To: Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]
CC: Flynn, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=735bf2d12a064b0998510511c5b4644b-MFlynn]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Rees, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rees, Sarah]
Subject: Re: Presidential Memorandum on Permitting

Hi Sarah, we don't typically touch permits or permit initiatives, and likely won't here especially since Commerce appears to be the lead rather than OMB.

In last Administration there was a permitting initiative for infrastructure that we worked on a bit but OECA was the lead (because of NEPA).

Shannon

Sent from my iPhone

> On Feb 1, 2017, at 10:43 AM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:

>
> Hi Shannon-
> I know there are a lot of things up in the air and in process, but I hadn't heard anything in any of the Agency first assistant meetings about this permitting Memorandum and whether EPA was taking a look at it (it is very possible I missed a discussion). Do you know whether anyone in your shop is looking at it or have suggestions for how we should engage at this point?

> Thanks
> Sarah

>
>
> -----Original Message-----
> From: Shaw, Betsy
> Sent: Wednesday, February 01, 2017 10:34 AM
> To: Dunham, Sarah <Dunham.Sarah@epa.gov>
> Cc: Lewis, Josh <Lewis.Josh@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>
> Subject: Presidential Memorandum on Permitting

>
> Hi Sarah,
>
> Attached is the permitting PM and below is the article I mentioned.

>
> Thanks,
>
> Betsy

>
> Trump Memos Spur New Industry Push for EPA Permitting Changes

>
> Posted: Feb 1, 2017, 8:00 AM EST

>
> By Patrick Ambrosio

>
> Manufacturers hope President Donald Trump's call to expedite permitting for new projects will galvanize the EPA and state environmental regulators to speed up their permit review processes and pursue broader revisions to underlying regulations.

>
> Trump's Jan. 24 presidential memorandum doesn't contain specific policy changes, but rather instructs the Commerce Department to coordinate with the EPA and other agencies to develop a "Permit Streamlining Action Plan" that recommends policy and procedural changes that will boost domestic manufacturing. Despite the lack of details, a pair of industry trade organizations that have long sought changes to the EPA's regulation of the manufacturing sector are optimistic that the new administration can help ease the process of obtaining air and water permits.

>
> The Trump memo could cover a number of environmental permits that manufacturing facilities must obtain, according to Michael Walls, vice president of regulatory and technical affairs at the American Chemistry

Council. Those include Title V operating permits and New Source Review permits issued under the Clean Air Act, as well as National Pollutant Discharge Elimination System permits issued under the Clean Water Act.

>

> The manufacturing sector has highlighted regulatory requirements, including delays in the processing of necessary permits, as a barrier to investment in domestic manufacturing projects. Greg Bertelsen, senior director for energy and resources at the National Association of Manufacturers, told Bloomberg BNA that the Trump memo is "right in line" with that organization's message on environmental regulations for the past several years.

>

> Trump Priority

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> Jon Sohn, an environmental and natural resources attorney at Dentons in Washington, D.C., said there are a range of issues that can make the permitting process take longer than industry would like. The Trump administration, however, will have to make the process more efficient and credible in a way that doesn't circumvent the public's right to engage on projects in their community, Sohn told Bloomberg BNA.

>

> "Figuring out how to get that done is clearly a priority of President Trump," Sohn said. "They're going to have to find a way to do that that respects and values the environment."

>

> The memo, which calls on federal agencies to submit to the White House within 120 days a plan with recommendations to streamline permitting and ease regulation on the manufacturing sector, is consistent with Trump campaign promises to reduce regulations as part of an economic agenda to drive job growth. The president followed up the memo on streamlining permitting and reducing regulatory burdens on manufacturing with a Jan. 30 executive order requiring agencies to identify two existing regulations for elimination for every new regulation issued.

>

> In addition to the order instructing the removal of regulatory burdens on manufacturing, a Trump executive order to speed up environmental reviews for pipelines, highways and other infrastructure projects could benefit manufacturers, Walls said.

>

> "I think it's appropriate to look at those two memos together," Walls said. "New investment in our industry is dependent on new infrastructure."

>

> But Sohn added that any list of credible recommendations on permitting will have to include a "frank discussion" on the capacity of the agencies to do the work faster in light of diminishing budgets in recent years, both on the state and federal levels.

>

> "In my view, the wrong direction would be to set up very draconian timelines without corresponding budget and capacity support to the EPA and their state partners," Sohn said.

>

> Permitting Run by States

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> The Trump administration won't be able to simply order the EPA to issue permits faster because most environmental permitting programs are run by state regulators, with the federal government playing an oversight role. While there are some actions the federal government could take in the short term to expedite permitting, such as revising the process for reviewing state permit decisions, changing the underlying environmental regulations governing the manufacturing sector would take time.

>

> "I think [Trump] appears to have good intentions, but EPA doesn't directly issue most of the permits," said Brian Potts, a partner at Perkins Coie LLP in Madison. "I always tell clients that the wheel of justice moves slowly. ... The wheels of administrative agencies move even more slowly."

>

> Potts, whose practice focuses on environment and energy issues, said the process to amend any EPA rules to ease permitting requirements, which states then would have to incorporate into their own rules, could take years. In addition, potential administrative changes to other regulations affecting the manufacturing sector, such as Clean Air Act regulations on the utility sector, won't be made quickly because they would be subject to rulemaking requirements under the Administrative Procedure Act, Potts said.

>

> Opposition Likely

>

> Potential changes to the underlying regulations, as well as any push to change the Clean Air Act and other environmental laws, will likely face fierce opposition from environmental watchdog groups, which have said they'll oppose any effort by Trump or Oklahoma Attorney General Scott Pruitt, the nominee to head the EPA, to weaken environmental protections.

>

> Eric Schaeffer, director of the Environmental Integrity Project, told Bloomberg BNA that state regulators already process most environmental permits quickly. Schaeffer served as director of the EPA's Office of Civil Enforcement before leaving the agency in 2002 to co-found the Environmental Integrity Project.

>

> "Most permits go through pretty quickly if the states want them to go through quickly," Schaeffer said. "Where they get held up sometimes is if there is a lot of local opposition" to a project.

>

> The Trump memo indicates that to the extent the EPA reviews a permit, the goal of the agency should be to expedite its processing, he added.

>

> "They're sending a message to grease the permits through," Schaeffer said. "Our take on that is: You want a fast permit? Do what the law says you're supposed to do."

>

> Schaeffer said environmental advocates will continue to exercise their right to challenge permit decisions in the courts, but acknowledged that it is "impossible to keep up" with all the permits that are issued.

>

> Quicker Decisions a 'Simple Reform'

>

> While states take the lead on most environmental permitting issues, there are several steps the federal government can take to speed up the process, attorneys said. In the short term, federal agencies could prioritize permitting programs and reallocate resources to those activities.

>

> Besides air and water permits processed on the state level, there are some permits that the federal government processes. The EPA is the lead permitting agency in some areas, mostly on tribal lands, while the U.S. Army Corps of Engineers reviews wetlands permits issued under Section 404 of the Clean Water Act.

>

> The EPA often defers making controversial decisions on permits and instead puts things on hold, according to Jeffrey Holmstead, who served as assistant EPA administrator for air and radiation under President George W. Bush. Holmstead, now a partner at Bracewell LLP in Washington, D.C., who focuses on energy and environmental issues, told Bloomberg BNA that sometimes his main job in helping a client through the permitting process is to "hound the agency" to get a decision made.

>

> Making more timely decisions is a "simple reform" that could be implemented fairly quickly because it doesn't require any regulatory changes, Holmstead said.

>

> Modeling Requirements Could Be Eased

>

> One area that Holmstead identified for improvement is the EPA's oversight of air quality modeling requirements under the New Source Review permitting program. That program requires manufacturing facilities, power plants and other stationary sources of air pollution to obtain a permit before construction begins.

>

> To obtain a New Source Review permit, an applicant must demonstrate that emissions from the project won't contribute to a violation of federal air pollution standards for ozone and other pollutants. Holmstead said the modeling is "very case-specific" and can be slowed by the EPA's need to approve the modeling evaluations.

>

> "In many cases, this is what holds up the project more than anything else," he said.

>

> In a January Environmental Law Institute article he co-authored, Holmstead argued that the EPA's current modeling guidance "substantially overstates" the air quality effects of potential new pollution sources and recommended adopting a probabilistic modeling approach that reflects variability in emissions, weather and background.

>

> Several attorneys noted that the EPA under President George W. Bush sought to change the New Source Review program to ease requirements on power plants, refineries and other industrial facilities by exempting routine maintenance projects from the permitting review. But the U.S. Court of Appeals for the District of Columbia struck that rule down in 2006 (New York v. EPA, 443 F.3d 880, 61 ERC 2133 (D.C. Cir., 2006)).

>

> Changes to Objection, Review Processes

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> Another area the Trump administration could target in an effort to expedite environmental permitting is the objection process under the Title V operating permit program. Title V of the Clean Air Act allows the public to petition the EPA administrator seeking an objection to Clean Air Act operating permits issued by state permitting authorities.

>

> Environmental advocates, including the Environmental Integrity Project, filed 34 permit objection petitions in 2016, according to the EPA's Title V petition database. The agency is supposed to issue a decision on Title V permit objection petitions within 60 days, but frequently takes longer.

>

> "That might be something you could see the Trump administration try to speed up," Sohn of Dentons said.

>

> Attorneys also identified the Environmental Appeals Board's processes for reviewing certain types of permitting decisions as a candidate for changes under the Trump administration. Permit applicants and other interested parties can petition the board, a panel of independent judges, to appeal permit decisions from EPA regional officials and some state permitting authorities. There is "no reason" the Environmental Appeals Board has to be involved in the permitting process and suggested that EPA leadership could easily alter the process, Holmstead said.

>

> Guidance, Rulemaking Options

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> In addition to internal EPA process changes, the Trump administration could issue new guidance and regulations to allow for the faster processing of environmental permits at the state level.

>

> For example, the EPA could clarify requirements under the National Pollutant Discharge Elimination System water pollution permitting program, according to Fredric Andes, a partner at Barnes and Thornburg LLP with offices in Washington, D.C., and Chicago. One area that produces some uncertainty and confusion in the Clean Water Act permitting process is antidegradation, the protection of water bodies that meet water quality standards to avoid backsliding, Andes told Bloomberg BNA.

>
> Additional guidance, as well as possible regulatory changes, might be needed to address water permitting for new manufacturing plants built near bodies of water deemed impaired, Andes said. That's due to a 2007 court decision that rejected a water pollution permit for an Arizona copper mining project because the permit would have allowed copper discharges into an river that didn't meet water quality standards (Friends of Pinto Creek v. EPA, 504 F.3d 1007, 65 ERC 1289, 2007 BL 118648 (9th Cir. 2007)).

>
> Andes said the EPA hasn't clarified how that ruling affects the ability of new plants to obtain a permit for discharges into an impaired body of water, even if the discharge from that facility is small. The issue hasn't been a priority for the agency because there haven't been many new plants built in the U.S. since the 2007 decision.

>
> "EPA may need to think about not only guidance, but changing the rules that were interpreted in that case," Andes said. "It just hasn't been a priority issue because ... there simply hasn't been a pressing need."

>
> Industry Prepping Recommendations

>
> The agencies tasked with developing the permitting plan can expect to hear a variety of suggestions from industry during the outreach period. Walls of the American Chemistry Council said the agencies' outreach effort will allow for industry to identify specific barriers and concerns to expansion projects.

>
> When asked for the types of regulatory changes that the Trump administration could take to boost manufacturing, Walls identified implementation of more stringent federal ozone standards set in 2015 as an area of focus. The ACC and other industry groups have opposed the standards, which parts of at least 22 states are unlikely to meet. A failure to attain the ozone standards would mean additional pollution control and permitting requirements in areas ranging from big metropolitan areas like Los Angeles to the rural, but oil-and gas-rich Uinta Basin in Utah.

>
> As part of this permitting and regulatory burden memo, the EPA could ease the implementation schedule for the ozone standards, which calls for decisions on what areas do and don't meet the standards by Oct. 1, Walls said.

>
> Bertelsen of the National Association of Manufacturers also identified the ozone standards as an area where the Trump administration could focus. Besides issuing more timely guidance to states on how to implement permitting under the ozone standards, the EPA also could revoke the less-stringent 2008 ozone standards to ease requirements on states and manufacturers.

>
> Industry advocates are eyeing Congress as a potential avenue to ease compliance with the 2015 ozone standards. Congressional Republicans have shown an appetite for rolling back Obama-era environmental rules early in the 115th Congress: The House is scheduled to vote this week on a pair of resolutions to disapprove of Obama-era rules on methane emissions and coal mining waste. The Congressional Review Act allows Congress to consider resolutions of disapproval on recently issued regulations under expedited floor procedures in the Senate.

>
> While environmental advocates have pledged to fight back against efforts to weaken the Clean Air Act, Holmstead of Bracewell said he's optimistic that there may be an opportunity for Congress to act on environmental issues. Holmstead noted that there are a number of Senate Democrats up for re-election in 2018 in states that Trump won in the 2016 election.

>
> "I think there's an opportunity for sensible statutory reform with these sorts of things," Holmstead said. Here's a link to the ar

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> http://esweb.bna.com/eslw/lpages/lpages.adp?pg=breaking_news&bn_product=deln#urn:bna:00000159e0b2d860a7ff6f260440000
> <Permitting PM.pdf>